In the High Court of Judicature at Madras

Dated: 01.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM

and

The Honourable Mr.Justice S.TAMILVANAN

Writ Appeal No.1750 of 2001

1. Chettinad Cement Corporation Limited
   having its Regd.Office at
   Rani Seethai Hall, 603, Anna Salai,
   Chennai, rep.by its Executive
   Director and Company Secretary
   R.Narayanan

2. R.Narayanan ..Appellants/ Petitioners

..vs..

1. Union of India represented by
   its Secretary,
   Ministry of Industries,
   Department of Industrial Development,
   Udyog Bhavan,
   New Delhi-110 001.

2. Union of India represented by
   its Joint Secretary,
   Ministry of Industries,
   Department of Industrial Development,
   Udyog Bhavan,
   New Delhi-110 001.

2. The Development commissioner of
   Cement Industry,
   Government of India,
   Ministry of Industry,
   Department of Industrial Development,
   Room No.327 Udyog Bhavan,
   New Delhi-110 001. ..Respondents/ Respondents

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Writ Appeal filed under Clause XV of the Letters Patent against the order dated 11.07.2001 passed in W.P.No.16542 of 1993 presented to this Court under Art 226 of the Constitution of India to issue a writ of certiorari calling for the records comprised in the proceedings of the 1st and 2nd respondents dated 4.9.92 in Lr.No.1 (23) /92 Cem and of the 3rd respondent dated 6.8.93 in No.DCCI/ACCt/RA/13-43/91/834 and quash the same.

For Appellants : Mr.Satish Parasaran

For Respondents : Mr.P.Wilson,
Assistant Solicitor General

JUDGMENT

P.SATHASIVAM, J.,

The above Writ Appeal is directed against the order of the learned single Judge dated 11.07.2001 made in W.P.No.16542 of 1993, in and by which, after finding that there is no merit in the writ petition, the learned Judge dismissed the same.

2. The writ petitioners are the appellants. For convenience, let us describe the parties as arrayed in the writ petition. Questioning the proceedings of the first and second respondents dated 04.09.1992 and of the third respondent dated 06.08.1993, Chettinad Cement Corporation filed W.P.No.16542 of 1993 to quash those proceedings on various grounds.

3. The case of the petitioners is briefly stated hereunder. The first petitioner is a Company registered under the Indian Companies Act, 1956. Its main activity is to manufacture/produce cement. The Central Government, in exercise of its powers under Section 18-G of the Industries Development (Regulation) Act, 1951, passed Cement Control Order (CCO) in 1967 (hereinafter called as "Order") and the Order came into effect from 01.01.1968. In terms of the Order, the Central Government is vested with the power to prohibit removal of cement except with its prior permission. It also empowered the Central Government to give directions for sale or transport of cement as well as to give directions with regard to the disposal of stocks of cement. In terms of Clause 8 of the Order, the Central Government was fixing the price of cement of F.O.R.basis (Free on Rail Destination Point) and every producer shall sell the cement at F.O.R.price fixed by the Central Government plus excise duty paid thereon. A producer is entitled to add two cost elements into the F.O.R.price, namely, (i) excise duty paid for the manufacturer; and (ii) cost for packing or packing charges, as fixed by the Central Government for packing

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cement in jute bags or in any other containers and different charges may be fixed by the Central Government for the use of new and serviceable second hand jute bags for the use of such other containers. The second proviso to Clause 8 also empowers the Central Government to fix the ratio in case of packing of cement in jute bags by which the producers are obliged not to use serviceable second hand jute bags in excess of the limit specified or ratio prescribed by the Central Government from time to time. In terms of Clause 9, every producer shall, in respect of every removal of cement, pay within one month of the close of the month, in which such sales or removal takes place to the Controller an amount equivalent to the amount if any by which the free on rail destination price of such cement exceeds the aggregate of the following amounts, namely,

> (i) the Ex-factory price of such cement calculated in accordance with the rates specified in the Schedule;
> (ii) selling and distribution expenses calculated at the rate of Rs.4/- per tonne;
> (iii) excise duty paid thereon; and
> (iv) in the case of packed cement, the charges fixed by the Central Government in respect of packing under the first proviso in clause 8 and where a producer uses second hand jute bags in excess of the limit, if any specified under the second proviso to that clause, such charges as proportionately reduced;

Thus, a producer is bound to pay or remit any amount to the cement Regulation Act only when the amount, by which the free on rail destination price of cement under clause 8, exceeds the aggregate of the amount as contemplated under clause 9 of the Order.

4. As on 31.03.1976, the first petitioner company had accumulated total loss of Rs.256.35 lakhs. Hence, they approached the Government seeking for certain reliefs and also sought for permission to use 100% serviceable second hand jute bags and also sought permission to use them in excess of the limit prescribed by the Government. The Central Government permitted the petitioners to use 100% serviceable second hand jute bags from 01.10.1977 to 30.09.1978. Based on the second representation, the Central Government extended the period by one month from 01.10.1978 to 31.10.1978. By a letter dated 24.12.1979, the Central Government informed the petitioners that the request for use of second hand serviceable jute bags cannot be permitted. Thereafter, the petitioners made further representation seeking extension of period. While matters stood, the petitioner received the communication from the Cement Controller on 29.11.1980, by which it was informed that a debit for a sum of Rs.24,94,964.16 was entered into the Cement Regulation Account of the petitioners as the amount recoverable on account of excess usage of second hand serviceable

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jute bags for the period from 01.11.1978 to 30.06.1979. Since the debit of the amount in question was arbitrary, and ultra vires the proviso of the Cement Control Order, the petitioner filed the said writ petition.

5. The 1st respondent filed a counter affidavit stating that as per the Cement Control Order, with effect from 15.10.1977, it was provided that in case a producer uses serviceable old jute bags in excess of limits prescribed by the Central Government, it will be taken into account for fixation of packing charges from time to time and the producer was required to claim proportionately less packing charges from Cement Regulation Account (CRA). Even after granting permission, as a special case for the petitioner, the excess packing charges so charged by M/s.Chettinad Cement Corporation Limited as per the calculation done by the respondents for the period from November 1978 to 30th September 1979 came to 24,94,565.16 (rounded to Rs.24.95 lakhs). Accordingly, a debit of Rs.24.95 lakhs was raised in the CRA of Chettinad Cement Corporation. The petitioner company was given an opportunity for personal hearing to discuss the issue on the basis of records relating to maintenance of CRA and also as to how the debit of Rs.24,94,564/- had been correctly arrived at and debited against them. The petitioner company used more than the prescribed number of old jute bags. Since the company used more old jute bags than the new jute bags, as against the ratio of new and old jute bags prescribed by the Government, and charged packing charges as per rates laid down on normative ratio of bags, the Company had undue and unintended benefit in collecting packing charges from the consumers. There is no merit in the claim made by the petitioners and prayed for dismissal of the writ petition.

6. In the light of the above pleadings, the learned Judge, after observing that the petitioners were afforded adequate opportunities, concluded that they exceeded the limit prescribed under the Control Orders and there was an unjust enrichment, dismissed the writ petition.

7. Heard Mr.Sathish Parasaran, the learned counsel appearing for the appellants and Mr.P.Wilson, the learned Assistant Solicitor General for the respondents.

8. The point that arises for consideration in this appeal is whether the petitioners have made out a case for interference and the respondents are justified in debiting Rs.24,94,565.16 in respect of excess use of second hand jute bags?

9. It is not in dispute that as per Cement Control Order, 1967, it was for the Government of India to fix packing charges for packing cement in jute bags or in any other container. The Cement Control Order also enables the Government to fix different rates of

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charges for new jute bags and serviceable old jute bags or other containers used for packing cement. The Order also provides that, in case a producer uses serviceable old jute bags in excess of limits prescribed by the Central Government, it will be taken into account for fixation of packing charges from time to time and the producer was required to claim proportionately less packing charges from Cement Regulation Account.

10. It is not in dispute that taking note of the grievance expressed and considerable loss during the period 1978-79, the Government, as a special case, in their proceedings dated 29.09.1977, permitted Chettinad Cement corporation to use second hand serviceable jute bags for packing of cement for the period from 01.01.1977 to 31.10.1978 in excess of the limits prescribed by the Central Government from time to time. However, the materials placed show that the first petitioner Cement Corporation continued to use old serviceable jute bags in excess of the limits prescribed by the Government and continued to charge higher package charges from the consumers, even after the permission expired on 30.10.1978. It is not in dispute that the excess packing charges so charged by the petitioners, as per the calculation done by the respondents, came to Rs.24,94,565.16.

11. It is also not in dispute that the petitioners were afforded an opportunity to putforth their case before arriving the figure of Rs.24,94,565/- and raising a debit in the CRA of the petitioner company. Perusal of the records shows that the petitioner company was not only given an opportunity for personal hearing to discuss how the amount was arrived at, but also allowed to peruse the records relating to the maintenance of CRA and how the debit of Rs.24,94,564/- had been arrived at. It is relevant to point out that only on the basis of the request of the petitioner Company and considering the severe financial crisis, the Government had permitted the petitioner company for using second hand serviceable jute bags for packing cement upto 100% in excess of the limit prescribed by the Government for the period of one year with effect from 01.10.1977. By the said communication, it was made clear to the petitioner company that the concession will not be extended beyond 30.09.1978. As a matter of fact, in the counter affidavit filed by the first respondent, it is specifically stated that during the discussion held on 16.09.1991, after proper explanation, the Company's representative had agreed to the calculations and after fully considered the written submissions as well as oral arguments, the request of the Company for extending the concession for use of 100% serviceable old jute bags was rejected. As rightly observed by the learned Judge, the Company used old jute bags much in excess of the limit prescribed by the Government and continued to charge higher packing charges from the consumers and enriched themselves, which cannot be permitted under the Cement Control Order. We are also in agreement with the claim

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of the respondents that the petitioner company had undue and unintended benefit in collecting packing charges from the consumers the differential packing charges as calculated for the period from 01.11.1978 to 30.09.1979 comes to Rs.24,94,565/- the same has to be undoubtedly paid to the Cement Regulation Account.

12. Inasmuch as the grievance of the petitioners was considered by the Government of India and 100% concession was given for usage of second hand jute bags for a period of one year and the same was extended by another one month, sufficient opportunity was afforded to putforth their defence in the enquiry and finally, the amount was arrived at. In the absence of additional materials, the same cannot be lightly interfered with, exercising jurisdiction under Article 226 of the Constitution of India as an Appellate Authority. All these aspects were duly considered by the learned single Judge and rightly rejected the claim of the petitioner. In such circumstances, the claim of the learned counsel for the petitioners that the observation and conclusion of the learned Judge with reference to Clauses 8 and 9 of the Cement Control Order cannot be faulted with and is liable to be rejected. On the other hand, we are in entire agreement with the said conclusion.

13. In the light of what is stated above, we do not find any error or infirmity or valid ground for interference. Consequently, the Writ Appeal fails and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to Government,
   Union of India
   Ministry of Industries,
   Department of Industrial Development,
   Udyog Bhavan,
   New Delhi-110 001.

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2. The Joint Secretary to Government,
   Union of India
   Ministry of Industries,
   Department of Industrial Development,
   Udyog Bhavan,
   New Delhi-110 001.

3. The Development commissioner of
   Cement Industry,
   Government of India,
   Ministry of Industry,
   Department of Industrial Development,
   Room No.327 Udyog Bhavan,
   New Delhi-110 001.

1 cc to Mr.P.Wilson, ASG, SR. 59352

Writ Appeal No.1750/2001

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